

REMARKS

Favorable reconsideration of the subject application is respectfully requested in view of the above amendments and the following remarks. Following the amendments, claims 5, 6, 8-16, 31, 33 and 34 are under consideration, with claims 5, 6, 8, 13, 31, 33 and 34 being in independent format.

Applicants wish to thank Examiner Ethan Whisenant for his helpful telephone discussions with the applicants' representative on May 7, 2003, and in particular for clarifying the basis for the rejection of the pending claims under 35 USC §112, first paragraph.

Claims 2 and 7 have been cancelled from the application. Claims 6, 8 and 13 have been amended to independent format. Claims 17-29 have been cancelled from the application as being drawn to non-elected inventions. Claim 32 has been cancelled from the application, and claim 33 has been amended to remove reference to sequences that have at least 75%, 90% or 95% identity to SEQ ID NO: 2076. Claim 34 has been amended to remove reference to sequences that are 20-mers of SEQ ID NO: 2076, and claim 35 has been cancelled from the application as being duplicative of claim 33 part (a).

It is urged that support for all the above amendments may be found throughout the specification as originally filed, and that none of the amendments constitute new matter or raise new issues for consideration.

Claim Rejections under 35 USC §112, first paragraph

Claims 2, 5, 6, 8-16 and 31-34 stand rejected under 35 USC §112, first paragraph, as lacking an enabling disclosure. Specifically, the Examiner has asserted that the claims read on the entire chromosome and that the disclosure is therefore only enabling for claims limited to isolated polynucleotides consisting of SEQ ID NO: 2076. This rejection is respectfully traversed.

The sequence of SEQ ID NO: 2076 is a cDNA sequence. Applicants have not sequenced the corresponding genomic sequence in order to identify differences between the isolated cDNA sequence and the naturally occurring genomic sequence, nor would it be reasonable to require the applicants to do so in order to obtain claims to an isolated polynucleotide comprising SEQ ID NO: 2076. However, as evidence by the Declaration of Dr. Murray Grigor, submitted herewith, applicants have compared the cDNA sequence of SEQ ID NO: 2076 with the corresponding

genomic sequences from *Arabidopsis thaliana* and poplar, and, based on that comparison, have determined that SEQ ID NO: 2076 most likely contains two introns.

It is therefore urged that claims directed to polynucleotides comprising SEQ ID NO: 2076 do not read on the entire chromosome, and that it would be well within the abilities of one of skill in the art, on being presented with the instant specification, to make and use polynucleotides comprising SEQ ID NO: 2076.

The Examiner has additionally rejected claim 35 under 35 USC §112, first paragraph, as lacking an enabling disclosure. Specifically, the Examiner has asserted that the specification does not provide enablement for isolated polynucleotides other than SEQ ID NO: 2076 that encode SEQ ID NO: 2249. Claim 35 has been cancelled as being duplicative of claim 33, thereby rendering this rejection moot. However, applicants note that, due to the degeneracy of the genetic code, one of skill in the art would be able to devise DNA sequences that are different to SEQ ID NO: 2076 but that encode the same amino acid sequence, prepare DNA constructs including such degenerate sequences and employ the resulting DNA constructs to express the same polypeptide as that expressed by SEQ ID NO: 2076. Applicants therefore do not acquiesce in this rejection.

It is respectfully submitted that all the presently pending claims fully satisfy the enablement requirements of 35 USC §112, first paragraph, and that the rejection of the claims under 35 USC §112, first paragraph, may be properly withdrawn.

#### **Claim Rejections under 35 USC §102**

Claims 2, 32 and 34 stand finally rejected under 35 USC §102(b) as being fully taught by Uimari et al. (The Plant Journal, 1997, 12(6):1273-1284). While applicants do not acquiesce in this rejection, claims 2 and 32 have been cancelled from the application, and claim 34 has been amended to remove reference to sequences that are 20-mers of SEQ ID NO: 2076.

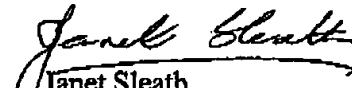
#### **Concluding Remarks**

Early reconsideration and allowance of the pending claims is respectfully requested. Every effort has been made to put the claims in condition for allowance. Should the Examiner have any

further concerns regarding this application, she is respectfully requested to telephone the undersigned at: 206.382.1191.

The Commissioner is hereby authorized to charge any additional fees which may be required in connection with the filing of these documents, or credit any overpayment, to Deposit Account No. 19-3555.

Respectfully submitted,

  
Janet Sleath  
Registration No. 37,007

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SPECKMAN LAW GROUP



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PATENT TRADEMARK OFFICE